IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.2173 OF 2006

Mr.Rakesh Jain ..Petitioner.

V/s.

The Union of India & Ors. ..Respondents.

Mr.Mohan Jaykar i/b. Khaitan Jaykar for petitioner.

Mr.L.S. Shetty with A.M.Sethna for respondents.

CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.

DATED : 25TH AUGUST, 2006.

P.C. :-

Rule, returnable forthwith.

2. M.Shetty waives service for the respondents.

3. Heard Mr.Jaykar in support of the petition. Mr.Shetty appears for the respondents. Heard finally by consent of the parties.

4. The diamonds which were sought to be exported by the petitioner were confiscated for under-valuation. When the price of the diamonds was checked

different valuers gave different valuation. The Commissioner of Customs passed an order permitting the petitioner to redeem the goods by paying the fine of Rupees five lakhs and penalty Rupees five lakhs. That order has been retained in the appeal by the Tribunal. It is another matter that the petitioner, in the meanwhile, got the diamonds released by paying fine as well as penalty.

5. The submission of Mr.Jaykar is that when the matter was heard by the Tribunal, the then Advocate of the petitioner had left practice and another Advocate was to appear. That request for adjournment was rejected. Subsequently, request for recalling that order was also rejected and, therefore, this petition is filed.

6. In view of the fact that the goods are already released by paying the penalty and fine, we would not have normally interfered with the matter. But what we find is that though the price was estimated by the valuers at a particular price, the assessment done by the department is still on a high side. This was sought to be canvassed before the Tribunal for which the petitioner did not get an opportunity. Mr.Shetty appearing for the respondents submitted that

ultimately, when the review application was made, the parties were heard. That cannot be an answer to the fact that originally the Tribunal had passed an order in the absence of the advocate for the petitioner. This being the position, we set aside the earlier order passed by the Tribunal as well as the subsequent order declining review and restore the appeal filed by the petitioner before the Tribunal. All rival contentions on merit are kept open.

7. Accordingly, petition is allowed. Rule is made absolute in terms of above with no order as to costs.

(H.L.GOKHALE J.)

(J.P.DEVADHAR, J.)